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**ATTORNEY FOR DEFENDANTS**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION**

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**CHRISTOPHER KORTLANDER,**

**Plaintiff,**

**vs.**

**BUREAU OF LAND  
MANAGEMENT, and  
DEPARTMENT OF THE  
INTERIOR, and DAVID  
BERNHARDT, in his official  
capacity of Acting Secretary of the  
Interior,**

**Defendants.**

**CV 18-162-BLG-BMM-JTJ**

**DEFENDANTS' PROPOSED CASE  
MANAGEMENT PLAN**

Pursuant to the Court's March 12, 2019 order (Dkt. # 11), Plaintiff Christopher Kortlander and Defendants Bureau of Land Management, Department of the Interior, and David Bernhardt, Acting Secretary of the Interior ("the

Parties") discussed a joint case management plan. Freedom of Information Act litigation is different than tort or other contested litigation. The Parties have different proposals for the case management plan regarding scheduling in this case. The following is Defendants' proposed case management plan and the basis for the proposal:

1. This case arises out of a Freedom of Information Act (FOIA) request in which the Department of the Interior is still in the process of issuing its response. Under FOIA, the court's jurisdiction to enforce FOIA is limited to enjoining the agency from withholding records, and to order the production of agency documents improperly withheld. 5 U.S.C. § 552(a)(4)(B) ("On complaint, the district court . . . has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant."). FOIA is therefore more like an action for review on an administrative record, which is exempt under Rule 26 (a)(1)(B) of the Federal Rules of Civil Procedure from initial disclosure and the Rule 26(f) conference. FOIA does not involve expert witnesses. Discovery is rarely needed in FOIA cases because the facts are rarely in dispute. *Minier v. CIA*, 88 F.3d 796, 800 (9th Cir. 1996). Accordingly, the Defendants maintain that setting discovery or expert deadlines at this stage would be premature.

2. Plaintiff's initial FOIA request sought "all information your agency has concerning the investigation or prosecution of the following named individual or entities: Robert W. Weaver (dob unknown dod 12/31/2016)." This request included all of the following:

agent's notes, reports, and Operations Plans, including all email communications within, to or from your agents and agency concerning any aspect of Robert Weaver and the investigation. The information requested includes, but is not limited to all information, investigation notes, laboratory tests and results, emails, phone conversation notes of every type involved in the matters identified above regarding the person or businesses of Robert Weaver. Further identification and information received from any and all informants and information sources providing information of any type whatsoever in the matter requested.

3. Defendant Bureau of Land Management ("BLM") produced 677 pages of records in response to Plaintiff's request on December 12, 2018.

4. Defendants are still processing records in response to Plaintiff's FOIA request. Law enforcement investigations are more complex to process and trigger a number of FOIA exemptions under 5 U.S.C. § 552(b). *See e.g., Kortlander v. BLM*, 816 F.Supp.2d 1001 (D. Mont. 2011). BLM has identified approximately 7900 pages of documents, 7200 pages of emails, plus video and audio files of potentially responsive records, related to the FOIA request. Plaintiff's request is one of forty-eight (48) FOIA requests to which BLM is responding in this district alone, and while BLM is working diligently to respond to Plaintiff's request, it has limited resources. Furthermore, BLM responds to FOIA requests in the order they

were received, and Plaintiff's request is not the oldest request. BLM has at least three (3) other requests that are the subject of litigation, and each of those requires processing and release of thousands of documents as well, one case alone involving 60,000 pages of documents.

5. Based on the foregoing, the Defendants propose the following schedule to govern further proceedings with respect to the potentially responsive records identified above:

- a. By May 1, 2019, Defendants will process 200 additional pages of potentially responsive records and produce any responsive, non-exempt records to Plaintiff.
- b. After May 1, 2019, on a monthly basis, Defendants will make a rolling production of responsive, non-exempt records to Plaintiff. This rolling production will not exceed eight (8) months, and the final production will be made by December 2, 2019.
- c. On or after December 3, 2019, the Parties will file a Joint Status Report with the Court concerning the production. Since this case is based on the non-response of the agency, it should be dismissed when all responsive, non-exempt records are

produced. BLM's final production letter will give appeal rights to the Plaintiff for administrative appeal under FOIA to the administrative appeals officer. Once any appeal is resolved, then there will be final agency action that can be reviewed by a court if any issues remain.

**DATED** this 17th day of April, 2019.

KURT G. ALME  
United States Attorney

/s/ Victoria L. Francis  
Assistant U.S. Attorney  
Attorney for Defendants

## **CERTIFICATE OF SERVICE**

I hereby certify that on the 17th day of April, 2019, a copy of the foregoing document was served on the following person by the following means.

1-2 CM/ECF  
           Hand Delivery  
           U.S. Mail  
           Overnight Delivery Service  
           Fax  
           E-Mail

/s/ Victoria L. Francis  
Assistant U.S. Attorney  
Attorney for Defendants